- **THE HON'BLE SRI JUSTICE J. CHELMESWAR**
- **AND**
- **THE HON'BLE SRI JUSTICE M.E.N. PATRUDU**

<+ WRIT PETITION NO. 13720 OF 2005

% THURSDAY THE SECOND DAY OF FEBRUARY TWO THOUSAND AND SIX.

The principal chief conservator of forests,

Andhra Pradesh, Hyderabad, having its office

At Tuljaguda complex, APHB Building

D.No. 4-1-714 to 725/1, M.J. Market, Hyderabad.

….Petitioner

Versus

$ T.Bhaskar Rao, Senior Assistant

o/o Forest Range Officer, Adilabad Range of

Adilabad Division.

…..Respondent.

! Counsel for the petitioner : Govt.Pleader for Service-I

^ Counsel for the respondent: Mr.P.V. Ramana Advocate.

< Gist :

> Head Note:

? Cases Referred

1. **1993 (2) SLR (SC)**

2) (1998(7) Supreme Court Cases 569

THE HONOURABLE SRI JUSTICE J. CHELAMESWAR

AND

THE HONOURABLE SRI JUSTICE M. E.N. PATRUDU

W.P.No. 13720 of 2005

Dated 02-02-2006

Between

The Principal Chief Conservator of Forests,

Andhra Pradesh, Hyderabad having its office

At Tuljaguda comsplex, APHB Building

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…Petitioner

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Adilabad range of Adilabad Division.

…Respondent

THE HONOURABLE SRI JUSTICE J. CHELAMESWAR

AND

THE HONOURABLE SRI JUSTICE M. E.N. PATRUDU

W.P.No. 13720 of 2005

O R D E R (per His Lordship M.E.N. Patrudu)

1:00 **PRAYER**

The petitioner is questioning the legality and correctness of the impugned order of the Administrative Tribunal of the State, (hereinafter referred as 'Tribunal') in O.A. No. 4461 of 2003, dated 28.01.2005.

2:00 **IMPUGNED ORDER**

To consider the case of the respondent for promotion to the post of Superintendent without reference to the charge memo, with all consequential benefits.

3:00 **FACTS**

The facts to the extent necessary are:-

3:01 The Principal Chief Conservator of Forests, Andhra Pradesh the petitioner

herein is the respondent in the O.A.

3:02 Mr. T. Bhaskar Rao, a Senior Assistant in the Forest Range Office of Adilabad, the respondent herein is the applicant in the O.A.

3:03 The petitioner vide Rc. No. 21904/2002/P1, dated 20.11.2002 issued a charge memo to the respondent and placed him under suspension on an allegation that the respondent was negligent in making entries in the cash register without proper scrutiny.

3:04 The respondent submitted his explanation on 31.12.2002.

3:05 Thereafter, the suspension of the respondent was revoked and was reinstated to duty without prejudice to the disciplinary proceedings which were already initiated against him.

3:06 The respondent challenged the disciplinary proceedings on the ground that they are contrary to the Rule-20 of A.P.C.S (CCA) Rules (hereinafter referred as 'Rules') in O.A. No. 2338/2003.

3:07 The Tribunal quashed the charge memo on the ground that the same was issued by an independent authority however by observing that the competent authority is at liberty to take such disciplinary action as it deems fit. The said order of the Tribunal is dated 28.04.2003.

3:08 While so, the respondent again approached the Tribunal through the present O.A. and obtained an interim order dated 9.7.2003 to consider the case of the respondent for promotion to the post of Superintendent in the existing vacancies, provided if there is no charge memo issued or pending against the applicant.

3:09 Till the issuance of said interim orders neither the petitioner nor the State has chosen to initiate any disciplinary action against the respondent after disposal of O.A. No. 2338 of 2003 despite of clear observation of the Tribunal.

3:10 However soon after the interim orders the Conservator of Forests, Adilabad issued a charge memo in Rc. No. 4816/2002/MIA, dated 18.07.2003.

3:11 The respondent was on leave from 18.07.2003 to 21.07.2003. The memo was pasted on the door of the residence of the respondent on 21.07.2003 stating that the door is locked. Thereafter, it was served in person on the respondent on 24.07.2003.

3:12 Thereafter, the petitioner had considered the promotions on 23.07.2003 and the case of the respondent was not considered on the ground that the disciplinary proceedings are pending against him.

3:13 The respondent has questioned the same.

3:14 The Tribunal pronounced the impugned order in favour of the respondent and the same is now under challenge before us.

4:00 **ARGUMENTS**

4::01 Heard the learned Government Pleader appearing for the petitioner and the learned counsel for the respondent.

4:02 The main grievance ventilated by the Government Pleader is that the Tribunal has erred in directing the petitioner to consider the promotion of the respondent when the disciplinary proceedings are initiated long back.

4:03 The learned counsel appearing for the respondent has highlighted certain important facts and mainly focused his arguments on rule 42 of the rules.

4:04 The counsel from both sides cited a decision each delivered by the Hon'ble Apex Court of the country.

5:00 **DECISION**

5:01 The two important points for our determination are:

1. Whether the notice of the proposed disciplinary action is served on the respondent as per rules?

2. Whether the candidature of the respondent is to be considered for promotion pending domestic enquiry?

5:02 **SERVICE OF NOTICE**:

The State has framed a specific rule for this purpose.

The rule is 42 and it is as follows:-

"Every order, notice and other process mode or issued under this rule shall be

i. if he is on duty be served on the Government servant by delivering or tendering it in person.

ii. If he is on leave or under suspension or otherwise absent be communicated to him by registered post to the address given by him, if any, or of his usual place of residence;

iii. If it cannot be served or communicated, be published in Andhra Pradesh Gazette.''

5:03 Plain reading of the rule clarifies that there are three modes of service of notice whenever a disciplinary action is proposed against the government servant.

5:04 In the instant case admittedly the petitioner did not follow any of the mode and on the other a new mode is introduced.

5:05 We are unhappy to note that the petitioner, a part and parcel of the governance of the State is not respecting the rule made by the same Government and introduced their own mode in haste to fulfil their intention to promote some employees through hurried orders burying the very object of administration and so also the justice.

5:06 The counsel for the petitioner relied on a judgment reported in

Delhi Development Authority v. H.C. Khurana.

5:07 Their Lordships of the Hon'ble Supreme Court of India observed in para-15 that the issue of a charge sheet means its despatch to the government servant and this act is complete the moment steps are taken for the purposes of framing the charge-sheet and dispatching it to the government servant, the further fact of its actual service on the government servant not being necessary part of its requirement.

5:08 We have minutely gone through the judgment referred above. In this case the disciplinary action was initiated as per the guidelines issued through the office Memorandum of the Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, Government of India. There is no specific rule like rule 42 of A.P. C.S. (CCA) rules about the mode of service of notice. Thereby the Hon'ble Supreme Court has expressed its view basing on the facts and circumstances in the said case.

5:09 In the instant case the facts and circumstances are entirely different. There is a specific rule under 42 of the CCA Rules and the petitioner is to follow the same without any deviation.

5:10 The counsel for the respondent relied on a judgment

Union of India v. Dinanath Shantaram Karekar

the Hon'ble Supreme Court in part-10 of the above judgment observed as follows:-

> "Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, …….. the employee is given an opportunity to submit his reply, the theory of "communication" cannot be invoked and "actual service" must be proved and established."

5:11 In the case before us, the notice was neither tendered in person or communicated through registered post or as an alternative published in the State Gazette.

5:12 Since the rule 42 is not followed we are in complete agreement with the findings of the Tribunal that there is no valid service of articles of charge on the respondent with regard to the initiation of disciplinary action.

PROMOTION OF THE RESPONDENT

5:13 Admittedly the respondent received the charge memo vide Rc. No. 21904/2002/P1, dated 20.11.2002 and also faced suspension, but was reinstated. Later the charge memo was quashed by the Tribunal and it was not questioned. The Tribunal, while quashing the said charge memo, given liberty to the competent authority to take such disciplinary action. For the reasons best known to the concerned, no action was initiated till 18.07.2003 though the Tribunal passed the order in O.A. No. 2338/2003 on 28.04.2003. Then the respondent again approached the Tribunal by filing the present O.A. No. 4461 of 2003 and got an interim direction on 9.7.2003. Thereafter, the petitioner has initiated the present disciplinary action and issued the charge memo dated 18.07.2003. Thereafter, on 23.07.2003 the petitioner promoted the juniors of the respondent ignoring the case of the respondent

on the ground that the disciplinary enquiry is pending against him.

5:14 In our considered opinion, this hurried and hasty action of the petitioner is questionable and we do not find any basis in law for this entire exercise, more so after the interim direction of the Tribunal dated 09.07.2003. When the Tribunal has given specific direction on 09.07.2003, to the effect that the case of respondent is to be considered for promotion if there is no charge memo issued or pending by that date, the petitioner ought to have implemented the directions. By not doing so the petitioner has not respected the Law of the land.

5:15 Further, the charge against the respondent is one of negligence. Perusal of the record discloses that the Deputy Conservator of the Forest has drawn Rs.15 lakhs for construction of waterfall at Basar and the expenditure is shown through some invoices and there are violations. Therefore, the embezzlement of the amount is by the Deputy Conservator of the Forests. The specific charge leveled against the respondent is that he has made entries in the cash books on the basis of vouchers which are counter-signed by the Deputy Conservator of Forest. Whether any action was initiated against the said Deputy Conservator of Forest is not known as the record is silent on it; but the respondent is facing disciplinary action and his seniority is ignored and his promotion is not considered from the year 2002 onwards and he is forced to challenge the same before the Tribunals and despite of specific direction from the Tribunal the petitioner is evading the consideration of promotion of the respondent on one hand and indulging in questionable activities on the other and that itself is a serious misconduct on the part of the petitioner.

5:16 The facts in Delhi Development Authority v. H.C. Khurana (1993 (2) SLR-509)

are almost identical to the case facts before us.

There are allegations of irregularities on the delinquent-employee and a charge memo was served, thereafter a charge sheet was framed and the charge sheet was dispatched on 13.07.1990. It was not served as the delinquent was on medical leave. While so on 28.11.1990 the Departmental Promotion Committee discussed the cases of all employees including the delinquent for promotion and followed the **sealed cover procedure** in his case and promoted his juniors by keeping his promotion in abeyance till the out-come of the domestic enquiry. The employee

challenged the same and the Delhi High Court allowed the prayer of the employee and directed the employer to consider his case if he has been otherwise found suitable. The judgment of the Delhi High Court came up before the Hon'ble Supreme Court.

Hon'ble Sri Justice J.S. Verma at para 8 of the judgment observed as follows:-

> "These works clearly indicate that the sealed cover procedure was applicable, in cases where the 'disciplinary proceedings are pending' in respect of the government servant; or 'a decision has been taken to initiate disciplinary proceedings'. Thus, on a decision being taken to initiate disciplinary proceedings the guidelines attract the sealed cover procedure. The reason is obvious. Where a decision has been taken to initiate the disciplinary proceedings against a government servant, his promotion, even if he is found otherwise suitable would be incongruous, because a government servant under such a cloud should not be promoted till he is cleared of the allegations against him, into which an inquiry has to be made according to the decision taken. In such a situation, the correctness of the allegation being dependent on the final outcome of the disciplinary proceedings, it would not be fair to exclude him from consideration for promotion till conclusion of the disciplinary proceedings, even though it would be improper to promote him, if found otherwise suitable, unless exonerated. To reconcile these conflicting interests, of the government servant and public administration, the only fair and just course is, to consider his case for promotion and to determine if he is otherwise suitable for promotion, and keep the result in abeyance in sealed cover to be implemented on conclusion of the disciplinary proceedings; and in case he is exonerated therein, to promote him with all consequential benefits, if found otherwise suitably by the Selection Committee. On the other hand, giving him promotion after taking the decision to initiate disciplinary proceedings, would be incongruous and against public policy and principles of good administration. This is the rationale behind the guideline to follow the sealed cover procedure in such cases, to prevent the possibility of any injustice or arbitrariness."

and finally held that adopting of sealed cover procedure is the best method. With respect we follow the dictum of the Hon'ble Supreme Court of India.

5:17 It was brought to our notice by the learned counsel for respondent that the respondent is reaching the age of superannuation and is already 57 years and is legitimately expecting his promotion.

6:00 **RESULT**

In this background and for the reasons stated above, we do not find any reasons to set aside the impugned order, but modify to the extent that the petitioner is directed to follow all the rules of A.P.C.S. (CC&A) and complete the disciplinary proceedings within a period of three months giving top priority for this and in the meantime the petitioner is directed to consider the case of the respondent for promotion by adopting the sealed cover procedure and keep the decision in abeyance till the final outcome of the disciplinary action and in the event that the respondent is found not guilty in the enquiry the petitioner has to promote the respondent if he has been otherwise found suitable, by giving the seniority with all consequential benefits from the date on which his juniors were so promoted.

Accordingly, the writ petition is disposed of. No order as to costs.

After the pronouncement of the judgment, the learned Government Pleader informed the Court that the respondent has retired from service with effect from 31.1.2006.

In the above circumstance the direction with regard to his promotion by adopting the sealed cover procedure is dispensed with, however in the enquiry if he is found not guilty he is entitled for notional promotion with all consequential benefits, if he is otherwise found suitable from the date on which his juniors are so promoted.

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J. CHELAMESWAR, J

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M.E.N. PATRUDU, J

Dated:02.02.2006

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